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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARK A. KIRK,

Plaintiffs,

v.

COUNTY OF SAN BERNARDINO;
MICHAEL A. RAMOS, in his
individual capacity, MELISSA
MANDEL, in her individual capacity;
R.LEWIS COPE, in his individual
capacity; HOLLIS "BUD" RANGLES,
in his individual capacity; ROBERT
SCHREIBER, in his individual
capacity, ADAM ALEMAN, individual
capacity, JOSIE GONZALES, in her
individual capacity, EDMUND G.
BROWN, JR., in his individual
capacity; GARY SCHONS, in his
individual capacity,

Defendants.

Case No. 5:18-cv-01597

COMPLAINT FOR:

- (1) MALICIOUS PROSECUTION 42 U.S.C. 1983;
- (2) RETALIATION 42 U.S.C. 1983;
- (3) FABRICATION OF EVIDENCE 42 U.S.C. 1983;
- (4) MONELL CLAIM; 42 U.S.C. 1983;
- (5) SUPERVISORIAL LIABILITY 42 U.S.C. 1983;
- (6) CONSPIRACY 42 U.S.C. 1983;
- (7) RETALIATION IN EMPLOYMENT STATE LAW

DEMAND FOR JURY TRIAL

1 1. Plaintiff, Mark A. Kirk, brings this action seeking compensatory and
2 punitive damages against Defendants, COUNTY OF SAN BERNARDINO
3 (County), MICHAEL A. RAMOS, MELISSA MANDEL, R. LEWIS COPE,
4 HOLLIS “BUD” RANGLES, ROBERT SCHREIBER, ADAM ALEMAN, JOSIE
5 GONZALES, EDMUND G. BROWN, JR., AND GARY SCHONS for violations of
6 Mr. Kirk’s civil and other rights under the United States Constitution and Under
7 California law.

8 2. Mr. Kirk’s claims are based upon an illegal campaign of retaliation,
9 intimidation, harassment, and malicious prosecution by the County and the State of
10 California, via their employees. Mr. Kirk was employed by the County as the Chief
11 of Staff for Mr. Gary Ovitt, an elected member of the County Board of Supervisors.
12 While Mr. Kirk was so employed, a Mr. Jeffrey S. Burum and Colonies Partners
13 sued the County for the right to receive just compensation for the uncompensated
14 “taking” of 72 acres of land by Defendant County and the San Bernardino County
15 Floor Control District (District) for a regional flood control facility. Mr. Burum and
16 Colonies exercised their First Amendment free speech rights to petition the
17 government and advocate for the settlement of the lawsuit. Mr. Kirk, and Mr. Ovitt,
18 were of the lawful opinion that the County should settle the lawsuit and Mr. Kirk
19 and Mr. Ovitt reasonably believed that the County was exposed to an extraordinary
20 financial liability if the County did not reach a settlement of the lawsuit. As a result
21 of the constitutionally protected efforts of Mr. Burum and Colonies, a settlement of
22 the lawsuit in the amount of \$102-million dollars was reached in November of 2006.

23 3. Following the settlement, Colonies continued to exercise it’s free
24 speech rights, again under the leadership and guidance of Mr. Burum, by making
25 political contributions to general purpose political action committees (PAC’s)
26 affiliated with pro-development politicians, including members of the San
27 Bernardino County Board of Supervisors and others who had supported the
28 settlement, including to various media outlets, the goal of these PAC contributions

1 was to support pro-development politicians and candidates for political office who
2 root out the intransigent and corrupt elements of the County that had plagued the
3 Colonies civil litigation.

4 4. One of the political contributions made by Colonies was to the Alliance
5 For Ethical Government (AEG). The AEG was a lawful PAC. The contribution was
6 made in the month of May of 2007, approximately 7 months after the settlement had
7 been reached in the Colonies lawsuit. Mr. Kirk was the Founder and the Executive
8 Director of the AEG and the PAC was formed to pursue ethical government in the
9 County and to make lawful political contributions to candidates who would serve the
10 citizens in an ethical and honorable manner.

11 5. The AEG filed all of the legal and appropriate disclosure documents
12 with the Secretary of State for the State of California.

13 6. As a result of the settlement in the Colonies lawsuit, and as a result of
14 the lawful contribution to the AEG, the Defendant's began a retaliatory campaign
15 developed and manifested in several ways. One such way was an unfounded
16 criminal investigation of Mr. Kirk, Mr. Burum, Mr. Paul Biane, and Mr. James
17 Erwin, and Colonies. This retaliatory and unfounded criminal investigation
18 ultimately resulted in felony charges being brought against Mr. Kirk in the case of
19 *People of the State of California v. Paul Biane, et. al.*, case number: FSB-1102102.
20 Mr. Kirk was charged with multiple felonies, including Conspiracy, Bribery, Public
21 Officer Crime, Improperly Influencing A Legislative Action, and with Conflict of
22 Interest. Mr. Kirk was arrested on these charges in the month of May of 2011 and
23 he was put into custody.

24 7. Before Mr. Kirk was charged and arrested, he had changed his job with
25 the County. In 2010, Mr. Kirk accepted the job of Director of Government
26 Relations in the County Executive Office. Mr. Kirk was placed on administrative
27 leave without pay as a result of the filing of the charges against him, and as a result
28 of his arrest on the charges. Mr. Kirk was not allowed to work in his office in the

1 County and he was not allowed to communicate with his staff and he was not
2 allowed to pursue employment outside of the County. As a result of these retaliatory
3 actions against Mr. Kirk, he was forced to resign his position with the County.

4 8. Mr. Kirk was put through 6-years of criminal litigation, and a 10-month
5 jury trial in the San Bernardino County Courthouse. Based upon the testimony and
6 the exhibits and the evidence that the prosecution produced at the criminal trial of
7 Mr. Kirk, it was readily apparent that the prosecution of Mr. Kirk was malicious and
8 retaliatory and without any justification.

9 9. Mr. Kirk did not need to call a single defense witness on his behalf
10 when the prosecution had rested it's case. After only several hours of deliberation,
11 the jury returned a verdict of Not Guilty on the only 2 remaining charges against Mr.
12 Kirk. (The trial judge had dismissed the other charges against Mr. Kirk when the
13 prosecution had rested.) Mr. Kirk was completely vindicated of all charges against
14 him.

15 10. This thorough repudiation of the prosecution's case, and the lengths to
16 which the prosecutors, investigators, and certain County-affiliated witnesses and
17 other witnesses went to manufacture a case against Mr. Kirk is evidence of the
18 retaliatory and unjustified motives that drove the criminal investigation and the
19 criminal prosecution from the beginning. Simply put, there was never any evidence
20 of criminal conduct involving the contribution to the AEG. Mr. Kirk was
21 maliciously and unfairly investigated, charged, and prosecuted on the charges in a
22 criminal court for exercising his constitutional rights to engage in lawful political
23 speech.

24 11. The wanton disregard and malicious conduct of the Defendant's
25 violates Mr. Kirk's constitutional rights under 42 U.S.C.1983. As a direct and
26 proximate result of the Defendant's actions, Mr. Kirk has suffered and will continue
27 to suffer damages. Mr. Kirk is entitled to compensatory damages, punitive
28 damages, attorney's fees and costs, pre-judgment interest, and all other relief as

1 provided by law.

2 **JURISDICTION AND VENUE**

3 12. This case arises under 42 U.S.C. 1983 and California law. This Court
4 has jurisdiction over this action pursuant to 28 U.S.C. 1331, 1343, and 1367(a).

5 13. Pursuant to California Government Code section 810 et.seq., Mr. Kirk
6 filed his state law claims with Defendant County on the date of December 18, 2017.
7 The Defendant County rejected Mr. Kirk's state law claims in a letter of rejection
8 dated January 31, 2018. Mr. Kirk is now filing these claims with this Court pursuant
9 to California Government Code section 945.6.

10 14. Venue is proper in the Central District of California under 28 U.S.C.
11 1391 (b) (1) (2), and because the majority of the Defendants reside in this District
12 and substantial acts and omissions giving rise to Mr. Kirk's claims occurred in this
13 District.

14 **THE PARTIES**

15 15. Plaintiff Mark A. Kirk is an individual who resides in the City of
16 Hesperia, in the County of San Bernardino, in the State of California.

17 16. Defendant County of San Bernardino (County) is a municipal
18 corporation organized and existing under the laws of the State of California.
19 Defendant County was at all relevant times mentioned herein responsible for its own
20 actions and/or omissions as well as the actions and/or omissions and the policies,
21 procedures, customs, and practices of the San Bernardino County District Attorney's
22 Office.

23 17. At all relevant times, Defendant Michael A. Ramos was the District
24 Attorney of the County of San Bernardino. In that capacity, he is the official
25 responsible for setting and enforcing the policies, customs, and the practices of the
26 District Attorney's Office. Defendant Ramos at all relevant times directed,
27 supervised, authorized, and/or ratified the actions of the office's employees, agents,
28 and officials as alleged herein.

1 18. At all relevant times, Defendant R. Lewis Cope was a Deputy District
2 Attorney for the County of San Bernardino in the District Attorney's "Public
3 Integrity Unit" and was a supervisor in that unit. Defendant Cope is employed by
4 and is an agent of Defendant County and the District Attorney's Office at all
5 relevant times herein. Defendant Cope was one of the lead prosecutors from the
6 District Attorney's Office assigned to prosecute Mr. Kirk, and as such he directed
7 and participated in the retaliatory criminal investigation of Mr. Kirk, including
8 directing, supervising, authorizing, and/or ratifying the actions of the Public
9 Integrity Unit's other employees, agents, and officials working on the investigation
10 and the criminal action against Mr. Kirk.

11 19. At all relevant times, Defendant Melissa Mandel was a Supervising
12 Deputy Attorney General for the State of California. Defendant Mandel is employed
13 by and is an agent of the State of California and the Attorney General's Office.
14 Defendant Mandel was one of the lead prosecutors assigned to prosecute Mr. Kirk,
15 and as such, she directed and participated in the retaliatory criminal investigation
16 and prosecution of Mr. Kirk, including directing, supervising, authorizing, and/or
17 ratifying the actions of the Attorney General's Office's other employees, agents, and
18 officials, as well as the District Attorney's investigators, who were working on the
19 criminal investigation and the criminal action of Mr. Kirk.

20 20. At all relevant times, Defendant Hollis "Bud" Randles was an
21 investigator in the San Bernardino County District Attorney's Office. Defendant
22 Randles was a lead District Attorney investigator in the retaliatory criminal
23 investigation and criminal prosecution of Mr. Kirk.

24 21. At all relevant times, Defendant Robert Schreiber was an investigator in
25 the San Bernardino County District Attorney's Office. Defendant Schreiber was a
26 lead District Attorney investigator in the criminal investigation and criminal
27 prosecution of Mr. Kirk.

28 22. At all relevant times, Adam Aleman was a Field Representative and

1 assistant to then- Supervisor Bill Postmus. Then, until July of 2008, Defendant
2 Aleman was Assistant Assessor for the County of San Bernardino. Thereafter
3 Defendant Aleman was a cooperating witness who initiated and participated in the
4 retaliatory criminal investigation and criminal prosecution of Colonies and Mr.
5 Burum, which ultimately led to the retaliatory criminal investigation and criminal
6 prosecution of Mr. Kirk.

7 23. At all relevant times, Defendant Edmund G. Brown, Jr., was the
8 Attorney General for the State of California. Defendant Brown at all times directed,
9 supervised, authorized, and/or ratified the actions of his office's employees, agents,
10 and officials as alleged herein.

11 24. At all relevant times until October of 2011, Defendant Gary Schons was
12 a Deputy Attorney General for the State of California. He was employed by and was
13 an agent of the State of California and the Attorney General's Office. Defendant
14 Schons was one of the prosecutors assigned to prosecute Mr. Kirk, and as such, he
15 directed and participated in the retaliatory criminal investigation and criminal
16 prosecution of Mr. Kirk, including directing, supervising, authorizing, and/or
17 ratifying the actions of the Attorney General's Office's other employees, agents, and
18 officials as well as the District Attorney's investigators working on the criminal
19 investigation and criminal prosecution of Mr. Kirk.

20 25. At all relevant times, Defendant Josie Gonzales was a member of the
21 Board of Supervisors for the County of San Bernardino and she represented the Fifth
22 District in the County of San Bernardino. Defendant Gonzales participated in the
23 retaliatory criminal investigation and the criminal prosecution of Mr. Kirk.

24 26. In taking the actions alleged herein, the Defendants acted under color of
25 law, and the Defendants conspired with each other and others to illegally retaliate
26 against, intimidate, and harass and maliciously prosecute for alleged felony crimes
27 Mr. Kirk for his lawful and rightful exercise of his free speech rights and his rights
28 to freedom of association in the United States Constitution for his involvement in the

1 lawful and proper AEG, and for his involvement in lawful and proper political
2 activities in the pursuit of honest and ethical government in the County of San
3 Bernardino.

4 **RELEVANT FACTUAL ALLEGATIONS**

5 27. A brief statement of the facts of the civil litigation involving Colonies,
6 Mr. Burum, and the County are helpful to understand the claims in this Complaint.

7 28. In 1997, Colonies purchased 434 acres of land in Upland, California for
8 development. The County and other entities built the 210 Freeway extension
9 through Colonies' property, and the County needed a large area in which to contain
10 the massive water runoff caused by that project and the related 20th Street Storm
11 Drain. The County and the District set out to force Colonies to build the flood
12 control facility itself, on Colonies' own land, and at the expense of Colonies, rather
13 than exercising the County's power of eminent domain over Colonies' land.

14 29. The existing flood control facilities were utterly inadequate to contain
15 up to 80- million gallons of water per hour that could be flooding onto the property
16 through the 20th Street Storm Drain. Colonies offered to give the County and the
17 District the necessary acreage if the County and the District would pay for the
18 construction of a basin that would control the new storm waters coming from the
19 210 Freeway project and the 20th Street Storm Drain. The County and the District
20 refused.

21 30. The position of the County and the District was that limited easements
22 from the 1930's allowed them to redirect the massive amount of flood waters created
23 by the construction of the freeway project onto the land of Colonies, and that
24 Colonies was obligated to pay for the required flood control facilities.

25 31. Colonies filed a Quiet Title action in March of 2002 to vindicate its
26 lawful property rights. The Honorable Peter Norell heard the trial in the matter in
27 2003 in the San Bernardino Superior Court. Mr. Burum testified for Colonies during
28 that trial. The trial went against the County and the District. Judge Norell ruled that

1 the County and the District did not have the right to dump the flood water onto the
2 land of Colonies without paying just compensation. The County and the District
3 appealed the decision of Judge Norell, and 3 years later, a second trial was held
4 before the Honorable Christopher Warner in the San Bernardino Superior Court.

5 32. On July 31, 2006, Judge Warner issued his statement of intended
6 decision after 6 weeks of trial. Judge Warner found that: 1) The County and the
7 District's easements did not justify the necessary flood control facilities, and that the
8 County and the District did not have the right to dump any water onto the land of
9 Colonies; 2) That the County and the District had engaged in "deceit" and that they
10 had played "hide the ball" and that they did try to "coerce" Colonies into giving up
11 it's rights with regard to it's land; 3) That Colonies had taken "every reasonable
12 action to protect the public" even in the face of the County and the District's "deceit
13 and misinformation"; 4) That the County and the District had essentially held
14 Colonies development "hostage" in order to get free flood control construction and
15 had "unreasonably and unjustifiably interfered with Colonies business"; and 5)
16 That the County and the District had "turned on" the 20th Street Storm Drain in 2002
17 "without providing for any viable flood-control facilities on [Colonies] property and
18 without ensuring public safety from the flooding hazard."

19 33. Mr. Burum did testify at this second trial before Judge Warner. Judge
20 Warner found that Mr. Burum was "a very credible witness" who had "answered
21 questions directly, succinctly, and without hesitation and equivocation."
22 Unfortunately for the County and the District, Judge Warner criticized the credibility
23 and the truthfulness of several witnesses who had testified at the trial for them, most
24 notably, Mr. Ken Miller and Mr. Patrick Mead who are both Directors for the
25 District. Essentially, Judge Warner adopted the credible testimony of Mr. Burum
26 over the testimony of Mr. Miller and Mr. Mead, which, understandably, was a sharp
27 blow to the County and to the District.

28 34. The statement of intended decision by Judge Warner was a critical

1 moment in the legal dispute between Colonies, Mr. Burum, and the County and the
2 District. Indeed, Mr. Mitchell Norton, a Deputy County Counsel for the County of
3 San Bernardino, told investigators that Judge Warner's intended decision was
4 "Armageddon" for the County and for the District. According to Mr. Norton, the
5 County and the District would be facing around \$300-million dollars in damages in
6 an inverse condemnation action that had been stayed pending the resolution of the
7 quiet title action *IF* the decision of Judge Warner became final. Judge Warner had
8 also found *bad faith* by the County and the District, and that finding would have
9 threatened the attempts of the County and the District to get indemnification from
10 other government agencies who were involved in the expansion of the 210 Freeway.

11 35. Mr. Burum commented publicly on the County's and the District's
12 reluctance to settle the legal dispute despite the "Armageddon" decision by Judge
13 Warner. Mr. Burum openly and publicly advocated for a settlement of the dispute,
14 and he offered sharp criticism of the County's Board of Supervisors and staff,
15 resulting in some negative press articles and public opinion regarding the County's
16 and the District's incompetence and misconduct that could potentially expose the
17 taxpayers of the County of San Bernardino to such a large financial risk.

18 36. Mr. Burum exercised his United States Constitutional rights and he
19 actively petitioned members of the Board of Supervisors for the County of San
20 Bernardino and other County officials to settle the legal dispute in a reasonable and
21 fair manner.

22 37. During the litigation in the legal dispute, Mr. Burum had exercised his
23 United States Constitutional rights by actively supporting and donating to candidates
24 for the Board of Supervisors for the County of San Bernardino. Colonies had
25 likewise actively supported and donated to candidates for the Board of Supervisors
26 for the County. The candidates, Mr. Paul Biane, and Mr. Gary Ovitt, were pro-
27 development candidates, and each had won their respective elections and had taken
28 their seats on the Board of Supervisors for the County.

1 38. The Board of Supervisors for the County settled the Colonies lawsuit
2 for the sum of \$102-million dollars on the date of November 28, 2006 thereby
3 ending the contentious and public legal dispute. The vote was 3-2 in favor of the
4 settlement. Supervisors Paul Biane, Gary Ovitt, and Bill Postmus voted in favor of
5 settling the lawsuit; Supervisors Josie Gonzales and Dennis Hansberger voted
6 against settling the lawsuit. (Supervisor Josie Gonzales had consistently been in
7 favor of settling the lawsuit, however she changed her vote and voted against settling
8 the lawsuit.)

9 39. Months *after* the 3-2 vote of the Board of Supervisors for the County to
10 settle the lawsuit, Colonies--under the leadership of Mr. Burum--exercised its United
11 States Constitutional rights of free speech and petition and made political
12 contributions to PAC's associated with members of the Board of Supervisors and to
13 others who had supported the settlement of the lawsuit and who would be in favor of
14 pro-development policies and projects.

15 40. The AEG was one such PAC that received one of these political
16 contributions in May of 2007, 7-months after the vote to settle the lawsuit by the
17 Board of Supervisors for the County. Mr. Mark Kirk was the Executive Director
18 and the Founder of the AEG.

19 **THE CRIMINAL INVESTIGATION AND CRIMINAL JURY TRIAL IN 2017**

20 41. The County had suffered a stinging defeat by Judge Warner, and had
21 suffered a lot of negative publicity at the hands of Colonies and Mr. Burum. 2 pro-
22 development members of the Board of Supervisors were elected with the support
23 and the political contributions of Colonies and Mr. Burum. And the lawful
24 settlement obligated the County and the District to pay \$102-million dollars to
25 Colonies. The Defendants were embarrassed and angry at the turn of events

26 42. Despite the lawful vote by the Board of Supervisors for the County to
27 settle the lawsuit to avoid "Armageddon," the County, and the District Attorney's
28 Office for the County of San Bernardino, and the Attorney General's Office for the

1 State of California, and it's employees and it's agents, and it's investigators, began a
2 retaliatory and malicious criminal investigation of Colonies and Mr. Burum. This
3 criminal investigation ultimately led to the lawful political contribution made by
4 Colonies to the AEG, and to Plaintiff Mr. Kirk who was charged in an Indictment
5 with multiple felony charges.

6 43. In 2010, Defendant Ramos and Defendant Brown held a joint press
7 conference to announce the prosecution of what they called the largest public
8 corruption scandal in the history of California. Defendant Brown claimed that it was
9 the "most appalling corruption case in decades" and a "shocking example of how
10 money can corrupt the government process".

11 44. Defendant Ramos stated that two Colonies partners had been named as
12 un-indicted co-conspirators at the time, and he warned that there was an "ongoing
13 investigation." Defendant Ramos said that a "well-orchestrated political and
14 personal attack on this District Attorney, attempting to intimidate me in obstructing
15 justice and finishing this job," and he noted that Colonies and Mr. Burum were
16 threats to his power, and declaring that he was going to "finish the job" by
17 aggressively investigating Colonies and Mr. Burum. Defendant Ramos assured the
18 public that Defendant Brown was his "crime-fighting partner," and that both were
19 responsible for the investigation. Defendant Ramos said that the Attorney General's
20 Office "went through all of our evidence, and now have worked with us every day
21 on this." Defendant Ramos named several of the Defendants, such as Gary Schons
22 and Melissa Mandel that they were "working together every day" on the
23 investigation.

24 45. Defendant Ramos said that Colonies had obtained the compensation for
25 its property in "these tough economic times," and explained that his goal was to "get
26 that money back to the citizens."

27 46. Defendant Brown stated that he found it significant that there was
28 "\$102-million being voted on," and explaining that the settlement would be "void"

1 and that the \$102-million would be paid back to the County by Colonies.
2 Defendant Brown claimed that there was “no basis” for the \$102- million dollar
3 settlement despite the fact that the Defendant County’s own lawyer, Mr. Mitchell
4 Norton, had stated that Judge Warner’s intended decision was “Armageddon” for the
5 County.

6 47. Defendant Ramos held another press conference in 2011 after Plaintiff
7 Mr. Kirk, Mr. Burum, Mr. Biane, and Mr. Erwin were indicted and arrested and put
8 into custody. During this press conference Defendant Ramos said that Defendant
9 Mandel was calling the prosecution team “Team Justice.” Defendant Ramos named
10 Defendant Mandel, Defendant Cope, Defendant Randles, Defendant Schreiber,
11 Defendant Brown, and others, as members of “Team Justice.” Defendant Ramos
12 brought up the \$102-million dollar settlement, during the press conference, and said
13 that “Team Justice” was going to seek an order requiring Colonies and Mr. Burum to
14 return the money that had been approved by the lawful vote of the Board of
15 Supervisors for the County. Defendant Ramos said during the press conference that
16 the District Attorney’s Office and the County Counsel’s Office for the County of
17 San Bernardino were “partners” in their efforts to recover the \$102-million dollars
18 thereby demonstrating that the Defendant Ramos and the Defendant County were
19 complicit in the malicious and retaliatory scheme to pursue a criminal investigation
20 and to seek and obtain an Indictment from the Grand Jury against Plaintiff Mark
21 Kirk.

22 48. Such public inflammatory, reckless, and prejudicial statements by the
23 Defendant Ramos and Defendant Brown and Defendant Mandel evidenced a
24 malicious and retaliatory motive and conspiracy by him and the Defendants to
25 pursue a criminal investigation and to seek an Indictment before the Grand Jury
26 against Plaintiff Mr. Kirk.

27 49. The pretext for the retaliatory and malicious criminal investigation and
28 the flawed presentation of the evidence at the Grand Jury and the Indictment with

1 multiple serious felony charges against Plaintiff Mr. Kirk was the contribution to the
2 AEG. The heart of the retaliatory criminal investigation was that the contribution to
3 the AEG in May of 2007 was a “secret” payoff for the votes of the members of the
4 Board of Supervisors for the County to approve the \$102-million dollar settlement.
5 In short, the contribution to the AEG was an alleged bribe. (And that the
6 contributions to the other PAC’s were also alleged bribes.)

7 50. The Defendants knew, and chose to ignore, the fact that the contribution
8 to the AEG was fully and publicly disclosed on all of the appropriate disclosure
9 forms commonly used by PAC’s. The AEG filed all of the appropriate disclosure
10 forms with the Secretary of State for the State of California to publicly document all
11 of its financial activities. The AEG had an experienced person, Betty Presley, who
12 made sure that all of the financial activities of the AEG were proper, legal, and in
13 full compliance with the laws for the creation, and the organization, and the
14 operation of a PAC in the State of California.

15 51. The Defendants knew, and chose to ignore, the fact that the AEG was
16 set-up and organized for a legal and legitimate purpose, to wit, to promote and
17 support better and ethical government in the County of San Bernardino, and to
18 promote and support better and ethical candidates to political office for the
19 betterment of the residents of the County of San Bernardino.

20 54. The Defendants knew that the political contribution to fund the AEG
21 came from Colonies under the leadership of Mr. Burum in the exercise of their
22 lawful free speech rights under the United States Constitution. The Defendants
23 knew that Plaintiff Mr. Kirk was the Executive Director and the Founder of the AEG
24 who decided to serve in that role in the lawful exercise of his free speech rights and
25 in the lawful exercise of his rights of freedom of association under the United States
26 Constitution.

27 55. The Defendants unfairly and maliciously targeted Plaintiff Mr. Kirk
28 because of the fact that Colonies and Mr. Burum had made the lawful political

1 contribution to the AEG.

2 56. The Defendants Ramos, Mandel, Randles, Schreiber, Schons and Cope
3 conducted a criminal investigation into Plaintiff Mr. Kirk and the AEG to target Mr.
4 Kirk and the AEG simply because the political contribution to fund the AEG came
5 from Colonies and Mr. Burum.

6 57. The Defendants Ramos, Mandel, Randles, Schreiber, Schons, and
7 Cope, during the course of the criminal investigation chose to ignore the vast amount
8 of exculpatory evidence and facts that showed that Plaintiff Mr. Kirk had done
9 nothing wrong, and in fact, had simply exercised his rights of free speech and his
10 rights of freedom of association under the United States Constitution to become the
11 Executive Director and the Founder of the AEG.

12 58. The Defendants Mandel and Cope appeared for “Team Justice” on
13 behalf of the prosecution and they presented witnesses and documents to the
14 criminal Grand Jury in April of 2011 in their pursuit of an Indictment against
15 Plaintiff Mr. Kirk for multiple serious felony charges against him.

16 59. The Defendants Mandel and Cope, on behalf of “Team Justice” chose
17 to ignore and chose to not present to the members of the criminal Grand Jury
18 exculpatory evidence that would have shown that Plaintiff Mr. Kirk was exercising
19 his lawful rights of freedom of speech and his rights of freedom of association under
20 the United States Constitution by serving as the Executive Director and the Founder
21 of the AEG.

22 60. The theory of the Defendant’s to maliciously implicate Plaintiff Mr.
23 Kirk in the course of the criminal investigation and in the pursuit of the criminal
24 charges against him was that Plaintiff Mr. Kirk “pressured” his then-boss, former
25 Supervisor Gary Ovitt, to vote for the \$102-million dollar settlement. And that
26 essentially Supervisor Ovitt voted for the \$102-million dollar settlement due to such
27 pressure from Plaintiff Mr. Kirk. The Defendant’s alleged that the “reward” to
28 Plaintiff Mr. Kirk for delivering the vote of Supervisor Ovitt in favor of the

1 settlement was the Colonies' political contribution to the AEG approximately 7-
2 months after the vote to approve the settlement in November of 2006. The bottom
3 line was that the political contribution from Colonies to the AEG was a "payoff" or a
4 "bribe" for the vote of Supervisor Ovitt to approve the settlement.

5 61. The Defendant's Ramos, Mandel, Cope, Randles, Schreiber, and
6 Schons all chose to ignore the exculpatory facts that Gary Ovitt had always been in
7 favor of settling the Colonies lawsuit even before he was elected to the Board of
8 Supervisors and before he had even met Plaintiff Mr. Kirk. Mr. Ovitt's position in
9 favor settling the lawsuit was widely and publicly known before he was elected to
10 the Board of Supervisors.

11 62. During the criminal trial of Plaintiff Mr. Kirk in 2017, Defendant's
12 Mandel and Cope called Gary Ovitt as a prosecution witness. Mr. Ovitt testified that
13 he voted for the \$102-million dollar settlement on his own believing that the
14 settlement was in the best interests of the County and of the residents whom he
15 represented while a member of the Board of Supervisors. Mr. Ovitt testified that
16 Plaintiff Mr. Kirk did not pressure him in any way to vote for the settlement, and
17 that Plaintiff Mr. Kirk was a honest and trustworthy person. These exculpatory facts
18 were never mentioned by the Defendants during any of the press conferences that
19 were held about the case by "Team Justice."

20 63. During the criminal trial of Plaintiff Mr. Kirk in 2017, Defendant's
21 Mandel and Cope called Lynda Farrady as a prosecution witness. Ms. Farrady was
22 called as an expert witness on the subjects of the legal requirements and the laws
23 relating to PAC's, and the legal regulations relating to the financial forms that must
24 be filed with the Secretary of State for the State of California per the California Fair
25 Political Practices Commission (FPPC.) Ms. Farrady testified that the AEG did in
26 fact file the necessary and required financial forms with the FPPC, and that the
27 forms were openly and publicly available for anyone to see.

28 64. Ms. Farrady testified during the trial that she could recommend to the

1 District Attorney's Office on behalf of the FPPC that a misdemeanor criminal charge
2 be filed against any PAC that was believed to have violated any of the laws and
3 regulations regarding the financial forms and the financial regulations of the FPPC.
4 Ms. Farrady testified that she did not see any violation of the laws and regulations of
5 the FPPC by AEG, and that she did not ever recommend that the D.A.'s office file a
6 criminal charge against AEG; that essentially, AEG followed the laws "by the
7 book."

8 65. During the criminal trial of Plaintiff Mr. Kirk in 2017, Defendant's
9 Mandel and Cope called Defendant Josie Gonzales as a prosecution witness.
10 Defendant Gonzales was at all relevant times, and currently still is, a member of the
11 Board of Supervisors for the County of San Bernardino. Defendant Gonzales had
12 always been in favor of settling the Colonies lawsuit, and she had agreed to the
13 \$102-million dollar settlement during the mediation proceedings before the final
14 settlement was reached in November of 2006. Defendant Gonzales switched her
15 vote and voted against the \$102-million dollar settlement in November of 2006.
16 Defendant Gonzales testified during the criminal trial to Plaintiff Mr. Kirk's
17 "aggressive" and "pushy" behavior while he was employed by the County.

18 66. Defendant Gonzales testified at the criminal trial that Mr. Burum had
19 pressured her to vote for the settlement while both she and Mr. Burum were in the
20 Country of China at a particular point in time. Unfortunately for the Defendants,
21 and Defendant Gonzales, Mr. Burum was never in the County of China at the time
22 that Defendant Gonzales testified under oath that he was there. The Defendants, in
23 their zeal to maliciously prosecute Mr. Burum, and to present false testimony against
24 him, and against Plaintiff Mr. Kirk, ignored plainly exculpatory evidence, to wit,
25 that Mr. Burum's United States Passport showed that he was never in the Country
26 of China, and that Mr. Burum's American Express bills which the Defendant's had
27 subpoenaed showed that Mr. Burum was in the City of Palm Springs, California, at the
28 exact same time that Defendant Gonzales testified under oath that he was in the

1 Country of China.

2 67. During the criminal trial of Plaintiff Mr. Kirk in 2017, the Defendants
3 Mandel and Cope called Defendant Adam Aleman as a prosecution witness.
4 Defendant Aleman had reached a deal with the Defendants Ramos, Mandel, Cope,
5 Schons, Randles, and Schreiber, to testify against Plaintiff Mr. Kirk, as well as Mr.
6 Burum, Mr. Biane, and Mr. Erwin in the trial. Defendant plead guilty to perjury and
7 several other felonies in exchange for his testimony at the trial. Defendants Mandel
8 and Cope called Defendant Aleman to testify at the criminal Grand Jury in April of
9 2011, and Defendant Aleman testified to the members of the Grand Jury that
10 Plaintiff Mr. Kirk told him that “Jeff [Mr. Burum] is giving me one-hundred
11 thousand dollars for Gary’s [Mr. Ovitt] vote.” Defendant Aleman testified to the
12 members of the Grand Jury that it was his belief that Plaintiff Mr. Kirk was setting
13 up the AEG to get the one-hundred thousand dollar contribution for the vote of Mr.
14 Ovitt. This false testimony presented by Defendants Mandel and Cope led to the
15 Indictment against Plaintiff Mr. Kirk and his subsequent criminal trial in 2017. It
16 should be noted that Defendant did not testify to the same things as he did to the
17 Grand Jury.

18 68. Defendant Aleman wore a wire and acted in an undercover capacity for
19 the Defendants Ramos, Mandel, Cope, Schons, Randles, and Schreiber during the
20 criminal investigation in the case. On the date of January 20, 2009, Defendant
21 Aleman recorded a conversation with Bill Postmus in which the matter of the AEG
22 came up, and the matter of Plaintiff Mr. Kirk being paid a salary of \$20,000 from the
23 AEG for his work as a political consultant. Plaintiff Mr. Kirk had experience and
24 expertise in the field of political consulting. During this recorded undercover
25 conversation, Defendant Aleman says to Bill Postmus that the salary of \$20,000 to
26 Plaintiff Mr. Kirk “is not illegal.”

27 69. Defendants Mandel and Cope did not move the trial court that was
28 presiding over the criminal trial in 2017 of Plaintiff Mr. Kirk, to dismiss the charges

1 against him given the exculpatory *evidence that the Defendants themselves elicited*
2 *during the case-in-chief. The fact that the Defendants* pursued the criminal
3 investigation, and pursued the criminal charges against Plaintiff Mr. Kirk in the face
4 of such substantial exculpatory evidence that completely undermined the entire
5 prosecution theory against Plaintiff Mr. Kirk goes to show the malicious and
6 retaliatory motives on the part of the Defendants.

7 70. Two people who were *similarly situated* yet one was investigated and
8 charged with multiple serious felonies, and made to endure the stress and the strain
9 of 6 years of criminal litigation, and made to endure a 10-month criminal jury trial as
10 a criminal defendant, this person being the Plaintiff Mr. Kirk, and the other person
11 being Mr. Matt Brown, who was not made to endure a criminal investigation and the
12 stress and the strain of a criminal jury trial; this disparate treatment goes to show the
13 malicious and the retaliatory motives of the Defendants as to Plaintiff Mr. Kirk for
14 the lawful exercise of his right to free speech and his rights to freedom of association
15 under the United States Constitution.

16 71. Mr. Matt Brown was the Chief of Staff to Mr. Paul Biane, former
17 Supervisor on the Board of Supervisors for the County of San Bernardino (and a
18 defendant in the Indictment and criminal jury trial referred to herein.) Plaintiff Mr.
19 Kirk was the Chief of Staff to Gary Ovitt, former Supervisor on the Board of
20 Supervisors for the County of San Bernardino. Mr. Brown formed and ran a PAC
21 called the San Bernardino Young Republicans (SBYR). Plaintiff Mr. Kirk was the
22 Executive Director and Founder of a PAC, called the AEG. Colonies, under the
23 leadership of Dan Richards, a partner in Colonies with Mr. Burum, made a lawful
24 political contribution to the SBYR in the amount of one-hundred thousand dollars in
25 the month of May of 2007. Colonies, under the leadership of Mr. Burum, made a
26 lawful political contribution to the AEG in the amount of one-hundred thousand
27 dollars in the month of May of 2007. The SBYR was designed to help Mr. Biane
28 politically, and to help in political campaigns and other political endeavors. The

1 AEG was designed to help in political campaigns, and to support and elect ethical
2 and honest candidates to political office, and to support ethical and honest
3 government. The SBYR complied with the applicable laws and regulations
4 governing the financial affairs of a PAC, and all of the required documents and
5 financial disclosure forms were property and publicly filed with the Secretary of
6 State for the State of California. The AEG complied with the applicable laws and
7 regulations governing the financial affairs of a PAC, and all of the required
8 documents and financial disclosure forms were properly and publicly filed with the
9 Secretary of State for the State of California.

10 72. Defendant Randles interviewed Mr. Brown and Mr. Brown agreed to go
11 undercover and wear a wire and record conversations with potential targets in the
12 criminal investigation as well as witnesses in the criminal investigation. Defendant
13 Randles interviewed Plaintiff Mr. Kirk and Plaintiff Mr. Kirk did *not* agree to go
14 undercover and to wear a wire to record conversations with potential targets in the
15 criminal investigation as well as witnesses in the criminal investigation.

16 73. Mr. Brown found himself not charged with any crimes. Plaintiff Mr.
17 Kirk found himself charged with multiple and serious felony crimes. This obvious
18 disparity and patent unfairness is evidence of the malicious and the retaliatory
19 motives of the Defendants to punish Plaintiff Mr. Kirk for the lawful exercise of his
20 rights to free speech and his rights of freedom of association under the United States
21 Constitution.

22 74. Defendants Ramos, Mandel, Cope, and Schons, are members of the California
23 State Bar. As such, the Defendants are governed by the California Rules of
24 Professional Conduct (RPC.) One such applicable rule is Rule 5-110 of the RPC.
25 Rule 5-110 says that one of the Special Responsibilities of a Prosecutor is to not
26 institute or continue to prosecute a charge that the prosecutor knows is not supported
27 by probable cause. Based upon the substantial amount of exculpatory evidence that
28 the Defendants themselves presented at the criminal trial, and that was readily

1 available to them yet not presented to the members of the criminal Grand Jury in
 2 April of 2011, the reasonable conclusion is that the Defendants were obligated to
 3 dismiss the charges against Plaintiff Mr. Kirk during the criminal trial in 2017. Not
 4 so dismissing the charges against Plaintiff Mr. Kirk either before or during the
 5 criminal trial does show a malicious and retaliatory motive by the Defendants to
 6 punish Plaintiff Mr. Kirk for the lawful exercise of his right to free speech and his
 7 rights to freedom of association under the United States Constitution.

8 **FIRST CLAIM**

9 **MALICIOUS PROSECUTION---42 U.S.C. 1983**

10 75. Plaintiff Mr. Kirk re-alleges and incorporates by reference each
 11 allegation contained in paragraphs 1 through 74, inclusive, in this Complaint as
 12 though fully set forth herein.

13 76. As alleged in this Complaint, the criminal investigation and the criminal
 14 prosecution of Plaintiff Mr. Kirk was undertaken to retaliate against Plaintiff Mr.
 15 Kirk for the lawful exercise of his right to free speech and his rights of freedom of
 16 association under the United States Constitution. The Defendants Ramos, Mandel,
 17 Cope, Randles, Schreiber, and Schons, all members of “Team Justice” set about to
 18 maliciously punish Plaintiff Mr. Kirk due to the fact that his PAC, the AEG, had
 19 received the political contribution from Colonies and Mr. Burum in May of 2007,
 20 and due to the fact that Plaintiff Mr. Kirk would not agree to work undercover as
 21 desired by the Defendants.

22 77. Defendants Randles and Schreiber manipulated the criminal
 23 investigation of Plaintiff Mr. Kirk in the manner in which they handled a prosecution
 24 witness, Mr. Bill Postmus. Mr. Postmus was suffering from an addiction to
 25 methamphetamine during the time that the investigation was ongoing, and during the
 26 time that the Defendants Randles and Schreiber were conducting multiple interviews
 27 of Mr. Postmus. Defendants Randles and Schreiber deliberately did not drug-test
 28 Mr. Postmus during the ongoing criminal investigation and during the times that they

1 conducted their interviews of Mr. Postmus. Defendants Randles and Schrieber used
2 techniques during their many interviews of Mr. Postmus that were designed to plant
3 false memories of events and statements that never happened.

4 78. Defendant Randles and Schreiber were the lead investigators for the Public
5 Integrity Unit in the District Attorney's Office working under the supervision of
6 Defendants Ramos, Cope, and Mandel during the criminal investigation and during
7 the criminal jury trial in this matter. Defendant Randles testified during the jury trial
8 in 2017 that he believed that the settlement in the Colonies lawsuit was outrageous
9 and egregious based solely upon the fact that the amount of the settlement was \$102-
10 million dollars. Defendant Randles' testimony gave the distinct impression that
11 criminal activity must have been involved in the settlement due to the dollar amount
12 of the settlement. This testimony prompted the trial judge in the criminal jury trial
13 in 2017 to ask Defendant Randles while he was on the witness stand with the jury
14 present *when* Defendant Randles and the Public Integrity Unit began to suspect that
15 something was amiss due to the dollar amount of the settlement. Defendant Randles
16 admitted to the trial judge that his suspicions began in December of 2006, a few
17 weeks after the \$102-million dollar settlement was reached in November of 2006.

18 79. Defendant Randles testified at the criminal jury trial in 2017 that "I
19 don't know a lot about the facts" of the Colonies civil litigation, and that he had
20 never read the opinions of the judge's who were involved in hearing the civil
21 litigation. Defendant Randles had never read nor understood that the appraisal of the
22 Colonies' land that had been taken by the Defendant County was over \$100-million
23 dollars.

24 80. The actions and the conduct of Defendants Randles and Schreiber
25 during the criminal investigation, and the actions and conduct of Defendants Ramos,
26 Mandel, and Cope, and "Team Justice" during the criminal Grand Jury in April of
27 2011, and during the course of the criminal litigation and the 10-month criminal jury
28 trial in 2017 caused Plaintiff Mr. Kirk to be maliciously prosecuted without probable

1 cause and for the purpose to retaliate and punish Plaintiff Mr. Kirk for the lawful
 2 exercise of his right to free speech and his rights of freedom of association under the
 3 United States Constitution.

4 81. The harm to Plaintiff Mr. Kirk from the illegal actions of the
 5 Defendants has resulted in the loss of income, the loss of retirement benefits, the loss
 6 of employment with the County of San Bernardino, the loss of business
 7 opportunities, the loss of reputation, the cost of hiring lawyers, and such other
 8 compensatory damages in an amount to be proven at trial.

9 82. The actions and the conduct of the Defendants Ramos, Mandel, Cope,
 10 Randles, and Schreiber was willful, wanton, malicious, retaliatory, and with reckless
 11 disregard for the Constitutional rights of Plaintiff Mr. Kirk and does therefore justify
 12 the imposition of exemplary and punitive damages as to each of them.

13 **SECOND CLAIM**

14 **RETALIATION---42 U.S.C. 1983**

15 83. Plaintiff Mr. Kirk re-alleges and incorporates by reference each
 16 allegation contained in paragraphs 1 through 82, inclusive, in this Complaint as
 17 though fully set forth herein.

18 84. Defendants Ramos, Mandel, Cope, Randles, Schreiber, Schons, and
 19 Brown, are, or were, all *state actors* or *acting under the color of state law* at all
 20 relevant times herein, and all of them had a duty to permit Plaintiff Mr. Kirk to the
 21 free exercise of his right to free speech and his rights of freedom of association and
 22 to the free exercise of his other rights under the United States Constitution.

23 85. When the Plaintiff, Mr. Kirk, exercised his rights under the United
 24 States Constitution as alleged herein, the Defendants Ramos, Mandel, Cope,
 25 Randles, Schreiber, Schons, and Brown *retaliated* against him by participating in
 26 actions and conduct to interfere with, and to deprive the Plaintiff, Mr. Kirk in the
 27 free exercise of his rights The Defendant's retaliatory actions and conduct include,
 28 but are not limited to, the following:

1 A. Initiating a baseless and illegitimate criminal investigation of the
2 AEG, and of Plaintiff, Mr. Kirk;

3 B. Eliciting false statements during the criminal investigation phase,
4 and false and perjurious testimony during the criminal Grand Jury in April of 2011,
5 and during the criminal jury trial in 2017, from Defendants Aleman, Gonzales, and
6 others, to implicate Plaintiff, Mr. Kirk, in non-existent criminal activity with regard
7 to the AEG, and the lawful political contribution to the AEG from Colonies;

8 C. Threatening and coercing other witnesses, such as Mr. Matt
9 Brown, into the giving or the making of false statements during the criminal
10 investigation and providing perjurious testimony.

11 D. Fabricating and falsifying evidence during the criminal
12 investigation;

13 E. The deliberate hiding of exculpatory evidence from two grand
14 juries.

15 86. The lawful and free exercise by the Plaintiff Mr. Kirk of his rights
16 under the United States Constitution was the reason for the retaliatory actions and
17 conduct of the Defendants Ramos, Mandel, Cope, Randles, Schreiber, Schons, and
18 Brown.

19 87. The harm to the Plaintiff Mr. Kirk from the retaliatory and the illegal
20 actions and conduct by the Defendants Ramos, Mandel, Cope, Randles, Schreiber,
21 Schons, and Brown has resulted in the loss of income, the loss of retirement benefits,
22 the loss of employment with the County of San Bernardino, the loss of business
23 opportunities, the loss of reputation, the cost of hiring lawyers, and such other
24 compensatory damages in an amount to be proven at trial.

25 88. The conduct and the illegal actions of the Defendants Ramos, Mandel,
26 Cope, Randles, Schreiber, Schons, and Brown was willful, wanton, malicious,
27 retaliatory, and done with the reckless disregard of the Constitutional rights of
28 Plaintiff Mr. Kirk and does therefore justify the imposition of exemplary and

1 punitive damages as to each of them.

2 **THIRD CLAIM**

3 **FABRICATION OF EVIDENCE---42 U.S.C. 1983**

4 89. Plaintiff Mr. Kirk re-alleges and incorporates by reference each
5 allegation contained in paragraphs 1 through 88, inclusive, in this Complaint as
6 though fully set forth herein.

7 90. As alleged above, the Defendants Randles and Schreiber fabricated
8 evidence that was used to obtain an Indictment against Plaintiff Mr. Kirk for
9 multiple serious felony charges. The fabricated evidence included, but is not limited
10 to, the false statements and testimony of Mr. Bill Postmus, the Defendant Aleman,
11 the Defendant Gonzales, and the Defendant Randles.

12 91. The Defendants Randles and Schreiber continued the criminal
13 investigation of Plaintiff Mr. Kirk even though knowing that Plaintiff Mr. Kirk was
14 innocent of all of the alleged criminal activity, and the Defendants Randles and
15 Schreiber were intentionally indifferent to the innocence of Plaintiff Mr. Kirk.

16 92. The Defendants Randles and Schreiber used tactics that were coercive
17 and abusive such that they knew, or were intentionally indifferent to, the fact that
18 such tactics would produce false and inherently unreliable information and evidence,
19 and that such information and evidence was used to get an Indictment of multiple
20 serious felony charges against Plaintiff Mr. Kirk.

21 93. The harm to Plaintiff Mr. Kirk from the illegal actions of the
22 Defendants Randles and Schreiber has resulted in the loss of income, the loss of
23 retirement benefits, the loss of employment with the County of San Bernardino, the
24 loss of business opportunities, the loss of reputation, the cost of hiring lawyers, and
25 such other compensatory damages in an amount to be proven at trial.

26 94. The illegal actions and the conduct of Defendants Randles and
27 Schreiber was willful, wanton, malicious, retaliatory, and with reckless disregard for
28 the Constitutional rights of the Plaintiff, Mr. Kirk and does therefore justify the

1 imposition of exemplary and punitive damages as to each of them.

2 **FOURTH CLAIM**

3 **MONELL CLAIM---42 U.S.C. 1983**

4 **THE DEFENDANT COUNTY**

5 95. Plaintiff Mr. Kirk re-alleges and incorporates by reference each
6 allegation contained in paragraphs 1 through 94, inclusive, in this Complaint as
7 though fully set forth herein.

8 96. The Plaintiff Mr. Kirk lawfully exercised his right to free speech and
9 his rights to freedom of association, and other rights, under the United States
10 Constitution at all relevant times herein. The individual Defendants, acting under
11 the color of state law, then retaliated against the Plaintiff Mr. Kirk as alleged herein
12 for what the Defendants knew was Plaintiff Mr. Kirk's lawful exercise of his rights
13 under the United States Constitution.

14 97. The Defendant County had in place official, and widespread, and
15 longstanding practices and procedures that amounted to the deliberate and
16 intentional indifference to Plaintiff Mr. Kirk's right to exercise his rights under the
17 United States Constitution without the retaliation of the government.

18 98. The practices and the procedures and the policies of the Defendant
19 County were a motivating and moving force behind the retaliatory actions and
20 conduct as alleged herein. The Defendant County permitted, maintained, and
21 allowed, but is not limited to, the following:

22 A. Permitting, ratifying, and condoning, the District Attorney's Office
23 for the County of San Bernardino to engage its resources and its investigators in
24 politically-charged criminal investigations without the regard for the existence of
25 credible and reliable evidence;

26 B. Permitting, ratifying, and condoning, the Defendant County's
27 employees in the District Attorney's Office to prepare and execute falsified search
28 warrants and engage in un-warranted criminal investigations in a manner intended to

1 embarrass, punish, and harass resulting in retaliation;

2 C. Permitting, ratifying, and condoning, the District Attorney's Office
3 to target the free speech that is protected by the United States Constitution through
4 the un-warranted criminal investigations for the purpose of chilling such protected
5 free speech;

6 D. Permitting, ratifying, and condoning, the Public Integrity Unit of the
7 District Attorney's Office to employ investigators who are dedicated to working on
8 the Public Integrity Unit's investigations, and therefore removing upon said
9 investigators the important and necessary checks-and-balances between the
10 investigators and the prosecutors;

11 E. Permitting, ratifying, and condoning, the collusive action between
12 the District Attorney's Office and other County employees for the purpose of
13 engaging in un-warranted criminal investigations in such a way as to intentionally
14 embarrass, punish, and harass as retaliation.

15 99. The Defendant Ramos who at all times relevant herein was an official
16 with final policymaking authority as it relates to the District Attorney's Office and
17 the criminal investigations that are undertaken and maintained by the District
18 Attorney's Office. Therefore, the actions and the conduct of the Defendant Ramos
19 as alleged herein and his authority and supervision of the Public Integrity Unit of the
20 District Attorney's Office, and his willful, affirmative, and conscious approval and
21 ratification of the illegal, wrongful, and retaliatory criminal investigation of the
22 Plaintiff Mr. Kirk constitutes an act of official government policy.

23 100. As a legal and proximate result of the County's practices and
24 procedures and policies, as alleged herein, and the Defendant Ramos's actions and
25 conduct as an official with policymaking authority, the Defendant County violated
26 the right of the Plaintiff Mr. Kirk to the free exercise of his rights under the United
27 States Constitution without the retaliation of the government which has resulted in
28 the Plaintiff Mr. Kirk suffering harm and injury, including the loss of income, the

1 loss of retirement benefits, the loss of employment with the County of San
 2 Bernardino, the loss of business opportunities, the loss of reputation, the cost of
 3 hiring lawyers, and such other compensatory damages in an amount to be proven at
 4 trial.

5 101. The Defendant County's actions and conduct was willful, wanton,
 6 malicious, and was done with the reckless disregard for the Constitutional rights of
 7 Plaintiff Mr. Kirk and does therefore justify the imposition of exemplary and
 8 punitive damages.

9 **FIFTH CLAIM**

10 **SUPERVISORIAL LIABILITY---42 U.S.C. 1983**

11 **DEFENDANTS RAMOS, MANDEL, COPE, SCHONS, AND BROWN**

12 102. Plaintiff Mr. Kirk re-alleges and incorporates by reference herein each
 13 allegation contained in paragraphs 1 through 101, inclusive, in this Complaint as
 14 though fully set forth herein.

15 103. On the basis of information and belief, and on the basis of the fact that
 16 Defendant Ramos was the District Attorney for the County of San Bernardino at all
 17 times relevant herein, the Defendant Ramos supervised Defendants Cope, Randles,
 18 and Schreiber regarding their actions and their conduct as alleged herein. As the
 19 District Attorney for the County of San Bernardino, and as their supervisor, the
 20 Defendant Ramos knew or should have known of their malicious and illegal
 21 retaliatory actions and conduct and the Defendant Ramos did not take steps to
 22 prevent and to stop said action and conduct. The failure by the Defendant Ramos to
 23 take the steps to prevent and to stop the malicious and the illegal retaliatory actions
 24 and conduct of the Defendants Randles and Schreiber resulted in the deprivation of,
 25 and the interference with, the lawful exercise of the rights of the Plaintiff Mr. Kirk
 26 under the United States Constitution. And the Defendant Ramos's supervision,
 27 control, and training of the Defendants Cope, Randles, and Schreiber was a legal and
 28 proximate cause of their illegal retaliatory actions and conduct and constituted the

1 deliberate and intentional indifference to the deprivation of the rights of Plaintiff Mr.
2 Kirk under the United States Constitution.

3 104. On the basis of information and belief, the Defendant Cope supervised
4 the Defendants Randles and Schrieber with regard to their actions and conduct as
5 alleged herein. In this capacity, the Defendant Cope knew or should have known of
6 their illegal and retaliatory actions and conduct and the Defendant Cope failed to
7 take the action necessary to prevent and to stop that actions and conduct and/or the
8 Defendant Cope acquiesced in the deprivation of the Plaintiff Mr. Kirk's rights
9 under the United States Constitution. The Defendant Cope's supervision, control,
10 and training of the Defendant's Randles and Schreiber was a legal and proximate
11 cause of their illegal and retaliatory actions and conduct and constituted deliberate
12 indifference to the rights of the Plaintiff Mr. Kirk under the United States
13 Constitution.

14 105. On the basis of information and belief, the Defendant Brown supervised
15 the Defendant's Mandel and Schons with regard to their actions and conduct as
16 alleged herein. In this capacity, the Defendant Brown knew or should have known
17 of their illegal retaliatory actions and conduct, and the Defendant Brown failed to
18 take action to prevent and to stop that conduct and/or acquiesced in the deprivation
19 of the rights of Plaintiff Mr. Kirk under the United States Constitution. The
20 Defendant Brown's supervision, control, and training of the Defendants Mandel and
21 Schons was a legal and proximate cause of their illegal actions and conduct and/or
22 constituted deliberate indifference to the deprivation of the rights of the Plaintiff Mr.
23 Kirk under the United States Constitution.

24 106. On the basis of information and belief, the Defendant Mandel
25 supervised the Defendants Randles and Schreiber with regard to their illegal actions
26 and conduct as alleged herein. In this capacity, the Defendant Mandel knew or
27 should have known of their illegal retaliatory actions and conduct, and the
28 Defendant Mandel failed to take action to prevent and to stop that conduct and/or

1 acquiesced in the deprivation of the rights of Plaintiff Mr. Kirk under the United
2 States Constitution. The Defendant Mandel's supervision, control, and training of
3 the Defendants Randles and Schreiber was a legal and proximate cause of their
4 illegal and retaliatory actions and conduct and/or constituted deliberate indifference
5 to the deprivation of the rights of Plaintiff Mr. Kirk under the United States
6 Constitution.

7 107. On the basis of information and belief, the Defendant Schons
8 supervised the Defendant Randles and Schreiber with regard to their actions and
9 conduct as alleged herein. In this capacity, the Defendant Schons knew or should
10 have known of their illegal and retaliatory actions and conduct, yet he failed to take
11 the action to prevent and to stop that action and conduct and/or acquiesced in the
12 deprivation of the rights of Plaintiff Mr. Kirk under the United States Constitution.
13 The Defendant Schons supervision, control, and training of the Defendants Randles
14 and Schreiber was a legal and proximate cause of their illegal and retaliatory actions
15 and conduct and/or constituted deliberate indifference to the deprivation of the rights
16 of Plaintiff Mr. Kirk under the United States Constitution.

17 108. The Defendant's supervisory conduct as alleged herein was so closely
18 related and connected to the deprivation of the rights of the Plaintiff Mr. Kirk under
19 the United States Constitution as to be the moving force that caused the resulting
20 injuries to the Plaintiff Mr. Kirk. Each of the Defendants was acting under the color
21 of the state law.

22 109. As a legal and proximate result of the Defendants Ramos, Mandel,
23 Cope, Schons, and Brown's supervisory actions and conduct, the right of the
24 Plaintiff Mr. Kirk to freely exercise his rights under the United States Constitution
25 without government retaliation was violated and resulted in the Plaintiff Mr. Kirk to
26 suffer injury and harm, including the loss of income, the loss of retirement benefits,
27 the loss of employment with the County of San Bernardino, the loss of business
28 opportunities, the loss of reputation, the cost of hiring lawyers, and such other

1 compensatory damages in an amount to be proven at trial.

2 110. The actions and the conduct of the Defendants Ramos, Mandel, Cope,
3 Schons, and Brown, in their supervisory capacity was willful, wanton, malicious,
4 and was done with reckless disregard for the rights of Plaintiff Mr. Kirk under the
5 United States Constitution, and does therefore justify the imposition of exemplary
6 and punitive damages.

7 SIXTH CLAIM

8 CONSPIRACY---42 U.S.C. 1983

9 ALL DEFENDANTS

10 111. The Plaintiff, Mr. Kirk, re-alleges and incorporates by reference each
11 allegation contained in paragraphs 1 through 110, inclusive, in this Complaint as
12 though fully set forth herein.

13 112. The Defendants formed a combination of two or more persons acting in
14 concert to commit the individual acts described in this Complaint herein, the primary
15 and principal element and objective was the agreement amongst the Defendants to
16 maliciously and illegally retaliate against the Plaintiff, Mr. Kirk and to deprive him
17 of his right to free speech, and his rights of freedom of association, and his other
18 rights, such as his right to Due Process in the Fifth and Fourteenth Amendments, and
19 his right to the Equal Protection of the law under the Fourteenth Amendment under
20 the United States Constitution.

21 113. The Defendants conspired, combined, colluded, and/or agreed to act in
22 concert to wrongfully initiate and pursue the criminal investigation of the Plaintiff
23 Mr. Kirk, and to obtain an Indictment against the Plaintiff Mr. Kirk, and to prosecute
24 him for multiple serious felony crimes in a lengthy criminal jury trial because the
25 Plaintiff Mr. Kirk, lawfully exercised his rights under the United States Constitution
26 to serve as the Executive Director and the Founder of the AEG, and to lawfully and
27 properly accept a political contribution from Colonies to the AEG.

28 114. The Defendants performed overt acts in furtherance of the conspiracy

1 as alleged herein.

2 115. The Defendant's conspiracy was the proximate cause of the illegal
3 retaliation against Plaintiff Mr. Kirk and the deprivation of Plaintiff Mr. Kirk's
4 rights under the United States Constitution.

5 116. As a direct result of the Defendant's conspiracy, the Plaintiff Mr. Kirk
6 has suffered injury and harm, including the loss of income, the loss of retirement
7 benefits, the loss of employment with the County of San Bernardino, the loss of
8 business opportunities, the loss of reputation, the cost of hiring lawyers, and other
9 such compensatory damages in an amount to proven at trial.

10 117. The actions and the conduct of the Defendant's was willful, wanton,
11 malicious, and was done with the reckless disregard for the right of the Plaintiff Mr.
12 Kirk to freely exercise his rights under the United States Constitution, and has
13 resulted in the deprivation of the rights of the Plaintiff Mr. Kirk under the United
14 States Constitution and therefore does justify the imposition of exemplary and
15 punitive damages as to each of them.

16 **SEVENTH CLAIM**

17 **RETALIATION IN EMPLOYMENT---STATE LAW**

18 118. The Plaintiff Mr. Kirk re-alleges and incorporates by reference each
19 allegation contained in paragraphs 1 through 117, inclusive, in this Complaint as
20 though fully set forth herein.

21 119. The Plaintiff Mr. Kirk was working as the Director of Government
22 Relations for the County of San Bernardino in the County's Executive Office at the
23 time that the Indictment was handed down by the criminal Grand Jury in May of
24 2011, and at the time that he was arrested on the charges contained in the
25 Indictment. At this time, the Plaintiff Mr. Kirk was placed on administrative leave
26 *without pay*. The Plaintiff Mr. Kirk was told by the Chief Executive Officer for the
27 County of San Bernardino, Mr. Greg Devereaux, that there was no way for the
28 County to work out any kind of possible arrangements with the Plaintiff Mr. Kirk to

1 receive any salary or financial compensation of any kind.

2 120. The Plaintiff Mr. Kirk went to the County Administration Building to
3 his office on the Fifth Floor to collect his things from his office. The Plaintiff Mr.
4 Kirk was told by Andrew Lamberto that Supervisor Josie Gonzales had screamed at
5 him for allowing the Plaintiff Mr. Kirk onto the Fifth Floor of the County
6 Administration Building, and that the Plaintiff Mr. Kirk was not to ever be allowed
7 onto the Fifth Floor, nor was the Plaintiff Mr. Kirk to be allowed to communicate
8 with his co-workers and staff.

9 121. Mr. Andrew Lamberto told the Plaintiff Mr. Kirk that Supervisor
10 Gonzales had called him a *criminal* to Mr. Lamberto.

11 122. At this point in time The Plaintiff Mr. Kirk believed that he had no
12 viable options in terms of keeping his job, or in terms of receiving some kind of
13 financial compensation from the County during the time that the criminal litigation
14 was ongoing. The Plaintiff Mr. Kirk resigned his at will position as the Director of
15 Government Relations for the County.

16 123. The retaliatory actions and conduct by the Defendant Josie Gonzales,
17 and the Defendant County resulted in the loss of income, the loss of retirement
18 benefits, the loss of reputation, the loss of health benefits, and such other
19 compensatory damages in an amount to be proven at trial.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, PLAINTIFF, MARK A. KIRK, demands judgement against
22 Defendants for the following relief

23 1. Damages of no less than \$40-million dollars, but in an amount
24 ultimately to be proven at trial, including but not limited to:

25 a. Compensatory damages for injury to person, lost income, lost
26 retirement benefits, loss of reputation, loss of other employment benefits, and loss of
27 business opportunities;

28 b. Punitive damages.

2. An award of reasonable attorney's fees, costs, and expenses to Plaintiff, Mark A. Kirk, pursuant to 42 U.S.C. 1988, in an amount to be proven at trial;
3. For costs of suit herein incurred;
4. Pre-judgment interest;
5. For such other and further relief as this Court shall find just and proper.

Dated: July 30, 2018

/s/ Peter Scalisi

Peter Scalisi

Attorney for Plaintiff MARK A. KIRK

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff Mark Kirk hereby demands a trial by jury of all issues so triable.

Dated: July 30, 2018

/s/ Peter Scalisi

Peter Scalisi

Attorney for Plaintiff MARK A. KIRK